

**ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

JUL 31 2008

O.A.H.

In the Matter of the Revocation of the Mortgage  
Broker License of:

No. 09F-BD001-BNK

**GEORGE MARCUS DBA LIBERTY  
NATIONAL MORTGAGE**  
19209 North 83<sup>rd</sup> Avenue, Suite 104  
Peoria, Arizona 85832

Respondent.

**NOTICE OF HEARING AND COMPLAINT**

PLEASE TAKE NOTICE that, pursuant to Arizona Revised Statutes ("A.R.S.") §§ 6-138, and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative Hearings, an independent agency, and is scheduled for September 10, 2008 at 9:00 a.m., at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix, Arizona, (602) 542-9826 (the "Hearing").

The purpose of the Hearing is to determine whether grounds exist to suspend or revoke Respondent's mortgage broker license; to order any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131; and to impose a civil money penalty pursuant to A.R.S. § 6-132.

Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied or expressed, to the Director of the Office of Administrative Hearings or the director's designee to preside over the Hearing as the Administrative Law Judge, to make written recommendations to the Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office of Administrative Hearings has designated Lewis Kowal at the address and phone number listed above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final decisions pursuant to A.R.S. § 41-1092.08 or other order or process which the Administrative Law Judge is specifically prohibited from entering.

1 Motions to continue this matter shall be made in writing to the Administrative Law Judge **not**  
2 **less than fifteen (15) days** prior to the date set for the Hearing. A copy of any motion to continue  
3 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of  
4 Administrative Hearings.

5 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by  
6 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity  
7 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses  
8 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to  
9 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),  
10 any person may appear on his or her own behalf or by counsel.

11 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be  
12 made by a court reporter or by electronic means. Any party that requests a transcript of the  
13 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

14 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant  
15 Attorney General Erin O. Gallagher, (602) 542-8935, 1275 West Washington, Phoenix, Arizona  
16 85007.

#### 17 **NOTICE OF APPLICABLE RULES**

18 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")  
19 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting  
20 forth the rules of practice and procedure applicable in contested cases and appealable agency actions  
21 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules  
22 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through  
23 R2-19-122. A copy of these rules is enclosed.

24 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer **within twenty (20)**  
25 **days** after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's  
26 position or defense and shall specifically admit or deny each of the assertions contained in this

1 Notice of Hearing. If the answering Respondent is without or is unable to reasonably obtain  
2 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall  
3 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.  
4 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an  
5 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.  
6 Any defense not raised in the answer is deemed waived.

7 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**  
8 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as  
9 true and admitted and the Superintendent may take whatever action is appropriate, including  
10 suspension or revocation of Respondent's license and imposition of a civil penalty or restitution to  
11 any injured party.

12 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial  
13 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or  
14 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,  
15 Arizona 85007 and to Assistant Attorney General Erin O. Gallagher, Consumer Protection &  
16 Advocacy Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

17 **Persons with disabilities may request reasonable accommodations such as interpreters,**  
18 **alternative formats, or assistance with physical accessibility.** Requests for special  
19 accommodations must be made as early as possible to allow time to arrange the accommodations. If  
20 accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

### 21 **COMPLAINT**

22 1. Respondent George Marcus dba Liberty National Mortgage ("Liberty") is authorized to  
23 transact business in Arizona as a mortgage broker, license number MB 0901902, within the meaning  
24 of A.R.S. §§ 6-901, *et seq.* The nature of Liberty's business is that of making, negotiating, or  
25 offering to make or negotiate loans secured by Arizona real property, within the meaning of A.R.S. §  
26 6-901(6).

- 1       2.   A July 23, 2007 examination of Liberty, conducted by the Department, revealed that Liberty:
- 2           a.   Failed to notify the Superintendent in writing and within five (5) business days of the
- 3               occurrence of the change of address of the principal place of business;
- 4           b.   Failed to use the license number as issued on its principal place of business license,
- 5               and failed to include the required disclosures within regulated advertising in at least
- 6               two (2) advertisements and/or solicitations, specifically:
- 7               i.   Respondent's license number is missing from its "We'll Finance the Dream!"
- 8               advertisement; and
- 9               ii.   Respondent's "1.75" advertisement is missing the terms and conditions and
- 10              failed to present the Annual Percentage Rate in the same size type as the rate;
- 11           c.   Failed to conduct the minimum elements of reasonable employee investigations prior
- 12               to hiring employees, specifically:
- 13               i.   Respondent failed to obtain completed and dated "I9" forms (Employment
- 14               Eligibility Verification Form) prior to hiring four (4) employees;
- 15               ii.   Respondent failed to conduct further investigation of two (2) employees with
- 16               derogatory credit reports; and
- 17               iii.   Respondent failed to correct this violation from its previous examination;
- 18           d.   Failed to maintain correct and complete records, specifically:
- 19               i.   Respondent could not provide any back-up documentation to the examiner
- 20               during the examination, specifically: deposit slips/receipts for deposits made and
- 21               bills/invoices for checks written;
- 22           e.   Failed to maintain a complete loan application list, specifically:
- 23               i.   Respondent's loan application list failed to include applications that were
- 24               declined, withdrawn or cancelled;
- 25               ii.   Respondent's loan application list failed to include all closed loans; and
- 26               iii.   Respondent's loan application list failed to include loans in process;

- 1 f. Failed to maintain originals or copies of loan transactions, specifically:
- 2 i. Respondent failed to maintain mortgage loan applications for two (2) borrowers;
- 3 g. Allowed borrowers to sign regulated documents containing blank spaces without
- 4 completing an authorization form to do so, specifically:
- 5 i. Four (4) borrowers' truth-in-lending statements were incomplete;
- 6 h. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
- 7 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
- 8 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
- 9 under these acts, specifically:
- 10 i. Respondent failed to provide complete truth-in-lending statements to four (4)
- 11 borrowers; and
- 12 ii. Respondent failed to disclose the yield spread premium on the good faith
- 13 estimate to three (3) borrowers;
- 14 i. Failed to use a statutorily correct written fee/document agreement signed by all
- 15 parties, specifically:
- 16 i. Four (4) mortgage loan files were missing written agreements; and
- 17 ii. Respondent does not have a written agreement form;
- 18 j. Failed to use proper appraisal disclosures, specifically:
- 19 i. Respondent has used a disclosure entitled "NOTICE TO APPLICANT OF
- 20 RIGHT TO RECEIVE A COPY OF APPRAISAL REPORT" that includes a
- 21 ninety (90) day limit on the amount of time in which an applicant may request
- 22 the appraisal; and
- 23 k. George Marcus ("Mr. Marcus"), Respondent's Responsible Individual, failed to be in
- 24 active management of Respondent's activities as governed by A.R.S. Title 6, Chapter
- 25 9, Article 1, specifically:
- 26 i. Mr. Marcus has failed to supervise Respondent's compliance with A.R.S. Title 6,

Chapter 9 as it relates to the licensee and other applicable rules, as evidenced by the eleven (11) violations of law and Mr. Marcus' lack of proficiency with the computer systems used by Respondent.

3. Based on the above findings, the Department issued and served upon Respondent a Notice of Assessment on January 15, 2008.

4. A copy of the Department's Report of Examination ("Report") accompanied the Notice of Assessment served upon Respondent. Page seventeen (17) of the Report states, "Within 30 days of the cover letter accompanying this report of examination, [Respondent] must advise the Superintendent of the actions taken to correct the violations of laws, and the measures implemented to prevent future violations."

5. The cover letter which accompanied the Report was dated January 15, 2008. Given five (5) days for mailing time, plus the thirty (30) day deadline Respondent's final date to respond to the Superintendent's request for a response to the examination report was February 19, 2008.

6. Chris Dunshee ("Mr. Dunshee"), the Department's examiner in charge of Respondent's examination, contacted Respondent by telephone and left messages on the following dates: February 26, 2008; May 6, 2008; May 9, 2008; and May 22, 2008. Throughout that time period, Mr. Dunshee spoke with Respondent on one (1) occasion. During the telephone conversation, Mr. Dunshee explained the importance of responding to the Superintendent's request for information. Respondent claimed he had provided a response to the examination report; however, to date, the Department has no record of any response.

7. On or about May 9, 2008, Respondent contacted Robert Charlton, Assistant Superintendent at the Department, and advised that he would hand-deliver another copy of his response to the Department on May 12, 2008. To date, the Department has not received the requested response to Liberty's examination report.

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LAW

1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to regulate all persons engaged in the mortgage broker business and with the enforcement of statutes, rules and regulations relating to mortgage brokers.

2. By the conduct set forth in the Complaint, George Marcus dba Liberty National Mortgage has violated the mortgage broker statutes and rules as follows:

- a. A.R.S. § 6-904(F) and A.A.C. R20-4-916, by failing to notify the Superintendent in writing and within five (5) business days of the occurrence of the change of address of the principal place of business;
- b. A.R.S. §§ 6-903(M) and 6-906(D), by failing to use the license number as issued on its principal place of business license, and failing to include the required disclosures within regulated advertising in at least two (2) advertisements and/or solicitations;
- c. A.R.S. § 6-903(N) and A.A.C. R20-4-102, by failing to conduct the minimum elements of reasonable employee investigations prior to hiring employees;
- d. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B), by failing to maintain correct and complete records;
- e. A.A.C. R20-4-917(B)(1), by failing to maintain a complete loan application list;
- f. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6), by failing to maintain originals or copies of loan transactions;
- g. A.R.S. § 6-909(A) and A.A.C. R20-4-921, by allowing borrowers to sign regulated documents containing blank spaces without completing an authorization form to do so;
- h. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e), by failing to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts;

- i. A.R.S. § 6-906(C), by failing to use a statutorily correct written fee/document agreement signed by all parties;
- j. A.R.S. § 6-906(C), by failing to use proper appraisal disclosures;
- k. A.R.S. § 6-903(E) and A.A.C. R20-4-102, by the failure of the Responsible Individual, Mr. Marcus, to be in active management of Respondent's activities as governed by A.R.S. Title 6, Chapter 9, Article 1; and
- l. A.R.S. §§ 6-123(3) and 6-124, by the failure of Respondent to timely respond to the Superintendent's request for information.

3. Respondent's failure to respond to a request for information from the Superintendent constitutes violations of A.R.S. §§ 6-124 and 6-123(3), which constitute grounds to suspend or revoke the mortgage broker license of George Marcus dba Liberty National Mortgage, number MB 0901902, pursuant to A.R.S. § 6-905(A).

4. The violations of applicable laws, set forth above, constitute grounds to suspend or revoke Respondent's mortgage broker license, pursuant to A.R.S. § 6-905(A).

5. The violations, set forth above, constitute grounds for the pursuit of any other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

6. Pursuant to A.R.S. § 6-132, Respondents' violations of the aforementioned statutes are grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day.

WHEREFORE, if after a hearing, the Superintendent makes a finding of one or more of the above-described violations or other grounds for disciplinary action, the Superintendent may suspend or revoke George Marcus dba Liberty National Mortgage's mortgage broker license pursuant to A.R.S. § 6-905(A); order any other remedy necessary or proper for the enforcement of statutes and

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1 rules regulating mortgage brokers in Arizona under A.R.S. §§ 6-123 and 6-131; and impose a civil  
2 money penalty pursuant to A.R.S. § 6-132.

3 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

4 Felecia A. Rotellini  
5 Superintendent of Financial Institutions

6 By   
7 Robert D. Charlton  
8 Assistant Superintendent of Financial Institutions  
9

10  
11 ORIGINAL of the foregoing filed this 31<sup>st</sup>  
12 day of July, 2008, in the office of:

13 Felecia A. Rotellini  
14 Superintendent of Financial Institutions  
15 Arizona Department of Financial Institutions  
16 ATTN: Susan Longo  
17 2910 N. 44th Street, Suite 310  
18 Phoenix, AZ 85018

19 COPY of the foregoing mailed/delivered same date to:

20 Administrative Law Judge Lewis Kowal  
21 Office of the Administrative Hearings  
22 1400 West Washington, Suite 101  
23 Phoenix, AZ 85007

24 Erin O. Gallagher  
25 Assistant Attorney General  
26 Office of the Attorney General  
1275 West Washington  
Phoenix, AZ 85007

Robert D. Charlton, Assistant Superintendent  
Chris Dunshee, Examiner In Charge  
Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

1 AND COPY MAILED SAME DATE by  
2 Certified Mail, Return Receipt Requested, to:  
3 George Marcus dba Liberty National Mortgage  
4 Attn: George Marcus, Owner  
5 19209 N. 83<sup>rd</sup> Ave., Ste. 104  
6 Peoria, AZ 85832  
7 Respondent

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By: Susan Lingo  
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